MOTION FILED
OCT 21 1977

IN THE

# SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1977

No. 77-454

MOORMAN MANUFACTURING COMPANY,
*Appellant,*

v.

G. D. BAIR, DIRECTOR OF REVENUE, STATE OF IOWA,
*Appellee.*

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF IOWA

## MOTION TO FILE AN AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANT

The Multistate Tax Commission hereby requests permission to file the attached Amicus Curiae Brief in support of this Court noting probable jurisdiction in the captioned matter for the reasons stated therein.

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## BRIEF FOR THE MULTISTATE TAX COMMISSION AS AMICUS CURIAE IN SUPPORT OF APPELLANT'S POSITION REGARDING JURISDICTION

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### I.

### STATEMENT OF INTEREST

The Multistate Tax Commission (hereinafter referred to as the Commission) is the official administrative agency of the Multistate Tax Compact (hereinafter referred to as the Compact) entered into cur-

rently by 19 states as full members, and by 13 states as associate members.[1]

The purposes of the Compact are to:

1. Facilitate proper determination of State and local tax liability of multistate taxpayers, including the equitable apportionment of tax basis and settlement of apportionment disputes.

2. Promote uniformity or compatibility in significant components of tax systems.

3. Facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration.

4. Avoid duplicate taxation.

In fulfillment of these objectives in the area of State income taxation of multistate businesses, Article IV of the Compact sets forth the provisions of the Uniform Division of Income for Tax Purposes Act promulgated by the National Conference of Commissioners on Uniform State Laws in 1957 for the allocation and apportionment of income. It apportions "business income" in accordance with the well recognized three factor apportionment formula of property, payroll, and sales, commented on by this Court in *General Motors Corporation vs. District of Columbia*, 380 U.S. 553 (1965).

Article VII permits the Commission to promul-

[1]The current regular members are the states of Alaska, Arkansas, California, Colorado, Hawaii, Idaho, Kansas, Michigan, Missouri, Montana, Nebraska, New Mexico, Nevada, North Dakota, Oregon, South Dakota, Texas, Utah and Washington.
The current associate members are the states of Alabama, Arizona, Georgia, Louisiana, Maryland, Massachusetts, Minnesota, New Jersey, Ohio, Oklahoma, Pennsylvania, Tennessee, and West Virginia.



gate advisory rules and regulations concerning this Uniform Act. The Compact also provides joint audits at the request of member states who further implement uniform enforcement of the Uniform Act. In this manner, the Compact and the Commission have sought to substantially diminish potential problems of overtaxation or undertaxation of the income of enterprises carrying on business activities in two or more states or countries. The Commission is thus concerned with purpose for, the operative effect of, and the validity of any state income tax apportionment formula that substantially deviates from the generally accepted and well recognized formula contained in Article IV of the Compact.

## II.

## ARGUMENT IN SUPPORT OF JURISDICTION

Although as indicated in *General Motors Corporation vs. District of Columbia, supra;* 380 U.S. 553 (1965) the sales factor apportionment formula may be constitutionally suspect in apportioning the net income of a manufacturing enterprise, we do not perceive this to be the basic issue in this cause. Rather, we believe the basic issue is whether or not Iowa's sales factor apportionment formula was intended to or in practical operation and effect discriminates against out-of-state manufacturers or interstate commerce in favor of instate manufacturers or intrastate commerce. We thus believe that this Court should note probable jurisdiction in this case

and apply the standards and rationale in such cases as *Boston Stock Exchange, et al vs. State Tax Commission*, 429 U. S. 318 (1977) and cases cited therein including *Halliburton Oil Well Company vs. Reily*, 373 U.S. 64 (1963).

Therefore it is respectfully submitted that this Court take jurisdiction of this cause for resolution of the discrimination issue.

Respectfully submitted,

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